

# Town of Lovettsville

## STAFF REPORT

## TOWN COUNCIL

PUBLIC HEARING	
ITEM IDENTIFICATION	LVZA 2010-0005 Deck Regulations
TYPE OF ITEM	Zoning Ordinance Amendment
DATE OF HEARING	October 14, 2010
APPLICANT	Town of Lovettsville

**BACKGROUND:** Numerous citizen complaints have been received by the Town about the Zoning Ordinance setback requirement of fifteen (15) feet for a deck from a property boundary. Complainants believe it is not a logical regulation given the fact that some houses are permitted to be setback as little as five feet from a side property boundary. On June 24 the Town Council authorized the staff and the Planning Commission to prepare an item evaluating this issue and making recommendations for changing the setback requirements for decks.

**DISCUSSION:** The current regulation for decks (Section 4-7 Uses and Structures Permitted in Required Yards (e)) requires a setback of at least fifteen (15) feet from a rear or side property boundary regardless of the setback requirement for the primary structure). Decks are not permitted in front yards. The following table shows side yard setbacks for primary residential structures:

Residential Zoning District	Minimum side yard allowed for a dwelling (in feet)
R-1	8
R-2	8
R-3	8
Town Center (T-C)	5
Planned Infill	6

Subdivision builders in the Town are, in some instances, are constructing homes designed with double doors to the outside, specifically designed for decks, that are located such that the deck would not meet the fifteen foot setback. This has been an inconvenience and disappointment to some homeowners.

It can be surmised that the intent of the Zoning Ordinance in establishing a fifteen foot setback for decks was to keep an outdoor activity area separated from the adjacent property in order to ameliorate potential noise and visual intrusion. This is a legitimate consideration when discussing deck setback regulation modifications. What then is the proper balance between allowing a deck as close as the setback allowed for a primary structure to a property boundary as a matter of convenience for the homeowner and setting a deck back from an adjacent residential property boundary to decrease potential noise interference for the neighbor? One option would be to allow a deck setback as close as the setback allowed for a primary structure to a property boundary on the basis that deck noise would not create any more adverse impact on the neighbor than the dwelling itself. Another option is to allow a deck setback as close as the setback allowed for a primary structure to a property boundary but with a requirement that if the deck were closer than fifteen (15) feet to a property boundary then an opaque screen would be required to shield the adjacent property. This, however, presents enforcement difficulties. The applicant would have to provide drawings of a screen and the Town would have to inspect the sites where these are required.

The Planning Commission discussed the issues and various options, including the noise impact if hot tubs and spas were allowed on decks close to adjacent property boundaries. They concluded that any potential noise impact from decks being located closer than fifteen feet from a property boundary is offset by the advantage of being able to build a deck with the same setback as a primary structure. This would mean deck setbacks would vary with primary building setbacks. The Commission also agreed with the staff recommendation that decks should be allowed on through lots, which, technically they are not given that a through lot has two front yards because of having frontage on two public streets.

The Planning Commission held a public hearing, September 1, at which public comments were all to the effect that citizens want to be able to build decks as close to a property side yard as the primary building. The text recommendation was adjusted to make it clear not only what the side yard setbacks may be but what the rear yard setback may be.

**PLANNING COMMISSION RECOMMENDATION:** The Planning Commission recommends the following amendment be made to Article 4 General Regulations:

**"4-7 USES AND STRUCTURES PERMITTED IN REQUIRED YARDS**

- (e) Decks are permitted require permits and may project into any a required side yard other than a front yard provided that the structure is not less than fifteen (15) feet from the deck is set back from a property boundary no less than the setback allowed for the primary building. A deck may project into a required rear yard provided that the deck is set back from a

property boundary no less than fifteen (15) feet. A deck may not project into a front yard, except on a *through lot*, in which case a deck may project into the front yard opposite the front entrance of the primary building on the lot no less than fifteen (15) feet. ”

**DRAFT MOTION:** “I move that the Town Council approve the proposed revised text regarding deck regulations in Section 4-7 (e) of the Zoning Ordinance.”